IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

FAO.No. 346 OF 2007()

AGAINST THE ORDER DATED 19/10/2007 IN IA 1119 2007 IN
OS.96/2007 OF SUB COURT,KOTTARAKKARA

**APPELLANT/PETITIONER**

SHAMSUDEEN, SEENA MANZIL,
KARAKKAL, VELINALLOOR VILLAGE,
KOTTARAKARA.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

**RESPONDENTS: COUNTER PETITIONERS**

1. JUMAILA BEEVI, PARANKIMAMVILA VEEDU,
KANYAKULANGARA, VEMBAYAM,
NEDUMANGADU TALUK.

2. SEENA FATHIM, PARANKIMAMVIAL VEEDU,
KANYAKULANGARA, VEMBAYAM,
NEDUMANGADU TALUK.

3. REENA FATHIM, PARANKIMAMVIAL VEEDU,
KANYAKULANGARA, VEMBAYAM,
NEDUMANGADU TALUK.

4. VIJAYAN PILLAI, S/O BHASKARAN,
GANAPTHI VILAKOM VEEDU,
VELLUPARA MURI, CHADAYAMANGALAM.

5. SURESH KUMAR, S/O SURENDRAN PILLAI,
GANAPTHI VILAKOM VEEDU,
VELLUPARA MURI, CHADAYAMANGALAM.

6. NIZAMUDDIN, THEKKEKADAYARA VEEDU,
POREDOM, CHADAYAMANGALAM.

7. A.BASHEERUDDIN, DIRECTOR,
CORPORATE OFFICE, FUMACE FABRICA(INDIA)LTD.,
MIDC POUNA, T.T.C. INDUSTRIAL AREA-C-16/3,
THANEBALAPOOR ROAD, MUMBAI.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

F.A.O. NO. 346 OF 2007

DATED THIS, THE 4TH DAY OF DECEMBER, 2007.

J U D G M E N T

Raman, J.

This is an appeal against the order dismissing the application filed under Order 39 Rule 1 of the Code of Civil Procedure, for temporary injunction by the appellant who is the plaintiff in O.S. 96/2007.

2. The suit is one for declaration and consequential injunction. The injunction sought for is against alienation by the title holder. It was found by the court below that the petitioner has no claim against the 7th defendant. The relief claimed is against defendants 1 to 3. Plaint allegation is that the property was purchased by defendants 1 to 3 in their name using plaintiff's money. Admittedly, thereafter, the property has been alienated in favour of the 7th defendant who is the present title holder. The second defendant filed O.S. 423/2005 before the Munsiff's Court, Kottarakkara for declaration of her right over 2 acres of land scheduled in the suit. The third defendant also filed O.S. 178/2006 before the same court for injunction restraining the petitioner herein from destroying the boundary of her property and other reliefs. Those two suits have been decreed by the court below. Petitioner herein filed O.S. 153/2006 for declaration of his right over the property

lying on the east of the property of the third defendant. The 7th respondent, in his objection inter alia contended that he purchased the property from second and third defendant on the basis of the advertisement seen in "Chandrika Malayalam Daily" and he is a bona fide purchaser for valid consideration. The court below found that balance of convenience is against the petitioner herein and hence declined to grant the relief and dismissed the petition. Challenging the the said order petitioner has come up in appeal.

3. In the factual situation, we find no merit in this appeal as discretion has been exercised on settled principles and evaluating the evidence and taking into consideration of the facts and circumstances of the case.

4. The learned counsel, however, sought for an early disposal of the case. Being a suit of the year 2007, straight away we cannot give any such direction. So however, if the appellant is able to show some urgency in the matter and if he moves the court below for an early disposal of the case, such request shall be considered.

With the above observation, the appeal is dismissed.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-